

PREVAILED

Roll Call No. \_\_\_\_\_

FAILED

Ayes \_\_\_\_\_

WITHDRAWN

Noes \_\_\_\_\_

RULED OUT OF ORDER

## HOUSE MOTION \_\_\_\_\_

MR. SPEAKER:

I move that Engrossed Senate Bill 245 be amended to read as follows:

- 1 Page 17, delete lines 1 through 12.
- 2 Page 17, line 13, delete "(3)" and insert "(2)".
- 3 Page 21, delete lines 10 through 13.
- 4 Page 21, line 14, delete "(9)" and insert "(8)".
- 5 Page 22, line 15, delete "(10)" and insert "(9)".
- 6 Page 22, line 19, delete "(11)" and insert "(10)".
- 7 Page 22, line 21, delete "(12)" and insert "(11)".
- 8 Page 22, line 23, delete "(13)" and insert "(12)".
- 9 Page 57, line 37, delete "IC 8-1-34-14);" and insert
- 10 "IC 8-1-34-17);".
- 11 Page 64, line 31, delete "IC 8-1-34-14);" and insert
- 12 "IC 8-1-34-17);".
- 13 Page 64, line 38, delete "IC 8-1-34-1)" and insert "IC 8-1-34-2)".
- 14 Page 67, line 32, delete "UPON" and insert "MARCH 14, 2006
- 15 (RETROACTIVE)];".
- 16 Page 67, delete lines 33 through 42, begin a new paragraph and
- 17 insert:
- 18 "Chapter 34. Video Service Franchises
- 19 Sec. 1. Except as otherwise provided in this chapter, the
- 20 definitions in Title VI of the federal Communications Act of 1934
- 21 (47 U.S.C. 521 et seq.) apply throughout this chapter.
- 22 Sec. 2. As used in this chapter, "affiliate", in relation to any
- 23 person, means another person that:
- 24 (1) owns or controls;

1           (2) is owned or controlled by; or  
 2           (3) is under common ownership or control with;  
 3 the person.

4           Sec. 3. As used in this chapter, "applicant" refers to a person  
 5 that is applying for a franchise under this chapter.

6           Sec. 4. As used in this chapter, "certificated provider of  
 7 telecommunications services" means a person holding a certificate  
 8 issued by the commission to provide local exchange telephone  
 9 service.

10          Sec. 5. As used in this chapter, "commission" refers to the  
 11 Indiana utility regulatory commission created by IC 8-1-1-2.

12          Sec. 6. As used in this chapter, "executive" has the meaning set  
 13 forth in IC 36-1-2-5.

14          Sec. 7. As used in this chapter, "existing video service provider"  
 15 means a provider of video services under a franchise issued before  
 16 March 16, 2006.

17          Sec. 8. As used in this chapter, "franchise" means an initial  
 18 authorization, or a renewal of an authorization, that:

19           (1) is issued by a franchising authority, regardless of whether  
 20 the authorization is designated as a franchise, a permit, a  
 21 license, a resolution, a contract, a certificate, an agreement, or  
 22 another designation; and

23           (2) authorizes the construction or operation of a video service  
 24 system, a telecommunications system, or another facility in the  
 25 public rights-of-way.

26          Sec. 9. As used in this chapter, "franchising authority" means  
 27 a:

28           (1) county;

29           (2) city; or

30           (3) town;

31 that issues a negotiated video franchise under this chapter, issues  
 32 an ordinance video franchise under this chapter, or has issued an  
 33 existing video franchise.

34          Sec. 10. As used in this chapter, "gross revenue" means all  
 35 revenue, as determined in accordance with generally accepted  
 36 accounting principles, which is actually received by the video  
 37 service provider and derived from the operation of the video  
 38 system to provide video services in the franchise unit. However,  
 39 gross revenue does not include:

40           (1) refunds or rebates made to subscribers or other third  
 41 parties;

42           (2) any revenue which is received from the sale of  
 43 merchandise over home shopping channels carried on the  
 44 video system, but not including revenue received from home  
 45 shopping channels for the use of the video service to sell  
 46 merchandise;

(3) any tax, fee, or charge collected by the video service provider and remitted to a governmental entity or its agent or designee, including without limitation a local public access or education group;

(4) program launch fees;

(5) directory or internet advertising revenue including, but not limited to, yellow page, white page, banner advertisement, and electronic publishing;

(6) a sale of video service for resale or for use as a component part of or for the integration into video services to be resold in the ordinary course of business, when the reseller is required to pay or collect franchise fees or similar fees on the resale of the video service; or

(7) revenues received by any affiliate or any other person in exchange for supplying goods or services used by the video service provider to provide video service.

Sec. 11. As used in this chapter, "legislative body" has the meaning set forth in IC 36-1-2-9.

Sec. 12. As used in this chapter, "negotiated video franchise" means a franchise granted by a franchising authority after negotiation with the applicant under section 23 of this chapter.

Sec. 13. As used in this chapter, "ordinance" includes a resolution.

Sec. 14. As used in this chapter, "ordinance video franchise" means a franchise granted by a franchising authority after an applicant provides notice under section 24 of this chapter that the applicant will provide video service in the franchising unit.

Sec. 15. As used in this chapter, "other programming service" refers to information that a provider makes available to all subscribers generally.

Sec. 16. As used in this chapter, "person" means an individual, a corporation, a partnership, a limited liability company, an association, a governmental entity, or another entity.

Sec. 17. (a) As used in this chapter, "transfer" means any transaction in which:

(1) an ownership or other interest in a video service provider is transferred, directly or indirectly, from a person or group of persons to another person or group of persons, so that majority control of the video service provider is transferred; or

(2) the rights and obligations held by the video service provider under a video franchise granted under this chapter are transferred or assigned to another person or group of persons.

(b) The term does not include:

(1) transfer of an ownership or other interest in the video service provider to the parent of the video service provider or to another affiliate of the video service provider;

(2) transfer of an interest in the video service franchise granted under this chapter or the rights held by the video service provider under the video service franchise granted under this chapter to the parent of the video service provider or to another affiliate of the video service provider;

(3) any action that is the result of a merger of the parent of the video service provider;

(4) any action that is the result of a merger of another affiliate of the video service provider; or

(5) a transfer in trust, by mortgage, or by assignment of any rights, title, or interest of the video service provider in the video service franchise or the system used to provide video service in order to secure indebtedness.

Sec. 18. As used in this chapter, "unit" has the meaning set forth in IC 36-1-2-23. However, the term does not include a township.

Sec. 19. As used in this chapter, "video programming" means programming provided by, or generally considered comparable to, programming provided by a television broadcast station.

Sec. 20. (a) As used in this chapter, "video service" means:

(1) the transmission to subscribers of video programming and other programming service:

(A) through facilities located at least in part in a public right-of-way; and

(B) without regard to the technology used to deliver the video programming or other programming service; and

(2) any subscriber interaction required for the selection or use of the video programming or other programming service.

(b) The term includes but is not limited to cable service.

Sec. 21. As used in this chapter, "video service provider" means a person or group of persons that:

(1) provides video service and directly or through one (1) or more affiliates owns a significant interest in a video service system; or

(2) otherwise controls or is responsible for, through any arrangement, the management and operation of a video service system.

Sec. 22. (a) As used in this chapter, "video service system" means a system, consisting of a set of transmission paths and associated signal generation, reception, and control equipment, that is designed to provide video service directly to subscribers within a community. The term includes:

(1) the optical spectrum wavelengths;

(2) the bandwidth; or

1           (3) other current or future technological capacity;  
2       used to provide the video service.

3       (b) The term does not include a system that transmits video  
4       service to subscribers without using any public right-of-way.

5       Sec. 23. (a) The franchising authority may grant a negotiated  
6       video franchise in conformity with:

7           (1) Title VI of the Communications Act of 1934, as amended  
8           (47 U.S.C. 521 through 47 U.S.C. 573); and

9           (2) this chapter.

10       (b) Except as provided by this chapter, the legislative body of a  
11       franchising authority may, by ordinance, exercise all of the  
12       regulatory powers over video service systems provided by the  
13       federal Communications Act of 1934. The regulatory powers  
14       granted by this subsection include the authority to:

15           (1) enforce customer service standards in accordance with the  
16           federal Communications Act of 1934;

17           (2) enforce more stringent standards as agreed upon by the  
18           video service provider through the terms of a video service  
19           franchise; and

20           (3) regulate the rates for basic video service in accordance  
21           with the federal Communications Act of 1934.

22       (c) A franchising authority, may not regulate video service  
23       providers through the adoption of ordinances or regulations that:

24           (1) are more onerous than ordinances or regulations adopted  
25           for existing video service providers;

26           (2) unreasonably prejudice or disadvantage any video service  
27           provider, whether existing or new; or

28           (3) are inconsistent with any provision of federal law or this  
29           chapter.

30       Sec. 24. (a) This section governs the procedures by which a  
31       franchising authority may grant ordinance video franchises.

32       (b) An ordinance video franchise, which shall have a term of 15  
33       years, may be requested by any of the following:

34           (1) A certificated provider of telecommunications services that  
35           has a franchise to use the public rights-of-way in a franchising  
36           unit.

37           (2) A certificated provider of telecommunications services that  
38           lacked prior consent to provide video service in a franchising  
39           unit but provided telecommunications services over facilities  
40           leased from an entity having a franchise to use of the public  
41           rights-of-way in the franchising unit.

42           (3) A video service provider that:

43               (A) has previous consent to use the public rights-of-way to  
44               provide video service in a franchising authority; and

45               (B) either:

1 (i) seeks to renew its existing franchise as a video service  
2 franchise; or

3 (ii) seeks to opt into the new terms of an ordinance video  
4 franchise under section 37(b) of this chapter.

5 (c) In order to obtain an ordinance video franchise, an applicant  
6 must first file with the executive of the franchising authority from  
7 which the applicant seeks to receive an ordinance video franchise  
8 a request to negotiate the terms and conditions of a negotiated  
9 video franchise. An applicant shall request and make itself  
10 available to participate in video service franchise negotiations with  
11 the franchising authority from which the applicant seeks to receive  
12 such a negotiated video franchise at least forty-five (45) days before  
13 filing a request seeking an ordinance video franchise. However, this  
14 prerequisite is not applicable if:

15 (1) a franchising authority refuses to engage in negotiations at  
16 the request of an applicant; or

17 (2) the applicant already holds a video service franchise from  
18 the franchising authority.

19 (d) After complying with subsection (c), an applicant, through  
20 its president or chief executive officer, shall file with the legislative  
21 body of the franchising authority a request for adoption of an  
22 ordinance video franchise at least thirty (30) days before offering  
23 video service in the franchising unit. The request for an ordinance  
24 must be accompanied by a map or a boundary description  
25 showing:

26 (1) the initial service area in which the video service provider  
27 intends to provide video service in the franchising unit within  
28 the three (3) year period required for an initial service area;  
29 and

30 (2) the area in the franchising unit in which the video service  
31 provider has its telephone facilities. The map or boundary  
32 description of the initial service area may be amended by the  
33 video service provider by filing with the franchising unit a  
34 new map or boundary description of the initial service area.

35 (e) The video service provider shall assure that access to video  
36 services is not denied to any group of potential residential video  
37 subscribers because of the income of the residents of the local area  
38 in which such group resides. The local franchising authority has  
39 the right to monitor and inspect the deployment of video services  
40 and the video service provider shall submit semiannual progress  
41 reports detailing the current provision of video services in  
42 accordance with the deployment schedule and its new service area  
43 plans for the next six (6) months. The failure to correct or remedy  
44 any material deficiencies shall be subject to the same remedies as  
45 contained in the video service franchise of the existing video service

1 provider as it existed at the time of the grant of the ordinance  
2 franchise.

3 (f) The franchising unit from which the applicant seeks to  
4 receive an ordinance cable franchise shall adopt any ordinance  
5 requiring adoption under this chapter within one hundred twenty  
6 (120) days of the applicant filing the notice required in subsection  
7 (c). Any ordinance adopted under this section that relates to a video  
8 service provider's provision of video service shall apply to such  
9 video service provider retroactively to the date on which the video  
10 service provider began to offer video service in the franchising unit.

11 Sec. 25. A franchising authority receiving a request for an  
12 ordinance video franchise in conformity with section 24 of this  
13 chapter shall adopt or amend ordinances to govern the provision  
14 of video service by the applicant consistent with sections 26 through  
15 36 of this chapter provided that any specific provision in any such  
16 ordinance shall not exceed the requirements imposed in the same  
17 provision, if any, in any existing video franchise within the  
18 franchising unit.

19 Sec. 26. (a) A locality may, by ordinance adopted after a public  
20 hearing, require a video service provider to provide the franchising  
21 unit with access to a number of public, educational, and  
22 governmental access channels, equal to the lowest number of these  
23 channels provided by any other video service provider in the same  
24 franchising unit. In addition, a franchising unit may, by ordinance  
25 adopted after a public hearing, require a video service provider to  
26 interconnect with another video service provider to ensure the  
27 carriage of required public, educational, and governmental access  
28 channels. If the new video service provider and all existing video  
29 service providers cannot agree to an interconnection agreement  
30 within one hundred eighty (180) days of a request to interconnect  
31 by the new video service provider, then the franchising unit is  
32 authorized to determine an interconnection point. The franchising  
33 authority or its designee shall assume responsibility for  
34 management, operation, and programming of channels described  
35 in this section. A franchising authority that substantially uses its  
36 existing public, educational, and governmental access channels may  
37 require a reasonable number of additional public, educational, and  
38 governmental access channels by the enactment of an ordinance,  
39 after a public hearing, if:

- 40 (1) the ordinance applies equally to all providers of video  
41 service within a franchising unit;
- 42 (2) the total number of additional public, educational, and  
43 governmental access channels does not exceed three (3)  
44 channels in the basic service tier; and
- 45 (3) the total number of public, educational, and governmental  
46 access channels does not exceed seven (7) channels in the

1 aggregate, unless the franchising unit and a video service  
 2 provider enter into a written agreement for the carriage of  
 3 additional public, educational, and governmental access  
 4 channels, including other arrangements for the carriage of  
 5 such programming.

6 (b) A public, educational, and governmental access channel  
 7 provided under this chapter that is not used by the franchising  
 8 authority for at least eight (8) hours a day is not available to the  
 9 franchising authority, but may be programmed at the video service  
 10 provider's discretion. At a time when the franchising authority can  
 11 certify to the video service provider a schedule for at least eight (8)  
 12 hours of daily programming for a period of three (3) months, the  
 13 video service provider shall restore the previously reallocated  
 14 channel. For purposes of this subsection, a public, educational, and  
 15 governmental access channel shall be considered to be substantially  
 16 used when twelve (12) hours are programmed on that channel each  
 17 calendar day. In addition, at least forty percent (40%) of the twelve  
 18 (12) hours of programming for each business day on average over  
 19 each calendar quarter must be nonrepeat programming. For  
 20 purposes of this subsection, a nonrepeat programming shall include  
 21 the first three (3) videocastings of a program and must include  
 22 programming on other public, educational, and governmental  
 23 access channels in that franchising unit. Programming for purposes  
 24 of determining substantial use may not include an alphanumeric  
 25 scroll.

26 Sec. 27. (a) An ordinance may require a video service provider  
 27 to pay a franchise fee, remitted on the same schedule as the least  
 28 frequent schedule of an existing video service provider, but not  
 29 more frequently than quarterly, calculated by multiplying a  
 30 franchise fee percentage rate by the video service provider's gross  
 31 revenues in the franchise area for the remittance period. However,  
 32 the franchise fee rate may not exceed:

- 33 (1) five percent (5%) of the gross revenues; and
- 34 (2) the lowest franchise fee rate paid or provided by an
- 35 existing video service provider in the franchising unit.

36 (b) The ordinance may require:

- 37 (1) the video service provider to make the franchise fee
- 38 payments to the franchising authority not later than forty-five
- 39 (45) days after the end of the remittance period; and
- 40 (2) the franchise fee payment be submitted with a brief report
- 41 prepared by a duly authorized representative of the video
- 42 service provider showing the basis for the computation.

43 The franchising authority has the right to reasonably require  
 44 further supporting information that does not exceed the  
 45 information required to be provided by existing video service  
 46 providers in the franchising unit.



1        **Sec. 28. A franchising unit in which an existing video service**  
 2 **provider pays or has paid a capital grant or is providing in-kind**  
 3 **services to support public, educational, and governmental channels**  
 4 **may, by ordinance adopted after a public hearing, require a new**  
 5 **video service provider to pay a fee to the franchising authority to**  
 6 **support the capital costs of public, educational, and governmental**  
 7 **channels, including institutional networks, equivalent to the fee for**  
 8 **public, educational, and governmental access channels paid by the**  
 9 **existing video service provider. However, any fee described in this**  
 10 **section shall be paid by video service providers only for the**  
 11 **remaining term of the existing video service provider's current**  
 12 **franchise. At the end of the term of an existing video service**  
 13 **provider's current franchise, the franchising authority may**  
 14 **negotiate with the video service providers in the franchising**  
 15 **authority to reach an agreement regarding the amount of any**  
 16 **support for public, educational, and governmental access channels.**  
 17 **If the parties cannot reach agreement, the franchising authority**  
 18 **may continue to impose a fee to support the capital costs of public,**  
 19 **educational and governmental access facilities that does not exceed**  
 20 **the amount paid by the existing video service provider. The**  
 21 **franchising authority may assess this additional fee on a per**  
 22 **subscriber basis or as a percentage of the video service provider's**  
 23 **gross revenues in that franchise area. This fee shall be remitted on**  
 24 **the same schedule as the franchise fee. The franchising authority**  
 25 **may, by ordinance adopted after a public hearing, permit one or**  
 26 **more video service providers to pay all or any part of such fees**  
 27 **through a credit from the provision of in-kind services such as the**  
 28 **provision of a public access studio or institutional network services.**

29        **Sec. 29. An ordinance may require a video service provider to**  
 30 **comply with the customer service requirements imposed by the**  
 31 **franchising authority under 47 USC. 552 (a)(1) and this chapter.**

32        **Sec. 30. (a) An ordinance must require a video service provider**  
 33 **to construct its video service system in a nondiscriminatory manner**  
 34 **as necessary to provide video services to:**

35            **(1) one hundred percent (100%) of the residential households**  
 36            **within an initial service area selected by the video service**  
 37            **provider within three (3) years after the grant of the**  
 38            **franchise; and**

39            **(2) sixty-five percent (65%) of residential households within**  
 40            **the franchising unit within seven (7) years after the grant of**  
 41            **the franchise;**

42        **to ensure that no group of potential residential subscribers is**  
 43 **denied or delayed access to video service because of the income of**  
 44 **the residents.**

45            **(b) During the twelve (12) month period commencing after the**  
 46 **seventh-year anniversary date of the grant of the franchise, a**

franchising authority may, by ordinance adopted after a public hearing in which the franchising authority specifically finds that such a requirement is necessary to promote competition in video services within the franchising unit, require the video service provider to make service available to no more than eighty percent (80%) of the residential dwelling units in the area in the franchising unit in which the video service provider has its telephone facilities within no less than ten (10) years of the date of the grant of the franchise, subject to the exclusions in this subsection. If the video service provider notifies the franchising authority that it is unwilling to accept this additional service availability requirement, the franchising authority may, after notice and public hearing, terminate the video service provider's ordinance video franchise. The video service provider shall file a certificate at its third and seventh, and if applicable, tenth anniversary dates certifying its compliance with the foregoing service requirements.

(c) Notwithstanding the other provisions of this section a franchising authority may not require:

- (1) a video service provider that provides video services over its telephone facilities to provide video service in any area where the video service provider does not have telephone facilities within the franchising unit; or
- (2) a video service provider to provide video services in areas where the average occupied residential household density is less than thirty (30) occupied residential dwelling units per mile (or any higher average density number that may be contained in an existing video service provider's video service franchise).

Sec. 31. (a) An ordinance may include procedures by which the franchising authority will enforce the provisions of this chapter and the applicable mandatory requirements of 47 U.S.C. 521 through 47 U.S.C. 573.

(b) The procedures under this section must require the franchising authority to:

- (1) informally discuss the matter with the video service provider in the event that the franchising authority believes that a video service provider has not complied with this chapter or the applicable mandatory requirements of 47 U.S.C. 521 through 47 U.S.C. 573; and
- (2) notify the video service provider in writing of the exact nature of the alleged noncompliance if the discussions described in subdivision (1) do not lead to resolution of the problem.

(c) The video service provider must have thirty (30) days from receipt of the written notice to:

1 (1) respond to the franchising authority, if the video service  
 2 provider contests (in whole or in part) the assertion of  
 3 noncompliance;

4 (2) cure the default; or

5 (3) if, by the nature of default, the default cannot be cured  
 6 within the thirty (30) day period:

7 (A) initiate reasonable steps to remedy the default; and

8 (B) notify the franchising authority of:

9 (i) the steps being taken; and

10 (ii) the projected date that they will be completed.

11 (d) The franchising authority shall schedule a public hearing if:

12 (1) the video service provider fails to respond to the written  
 13 notice under the procedures required by this section; or

14 (2) the alleged default is not remedied within thirty (30) days  
 15 of the date projected for cure of the default if the franchising  
 16 authority intends to continue its investigation into the default.

17 The franchising authority shall provide written notice of the  
 18 hearing to the video service provider at least thirty (30) business  
 19 days before the hearing. The notice must specify the date, time,  
 20 place, and purpose of the hearing, and provide the video service  
 21 provider the opportunity to be heard.

22 Sec. 32. (a) An ordinance may include a schedule of civil  
 23 penalties that may be imposed upon any video service provider  
 24 with an ordinance video franchise when the franchising authority  
 25 determines that the video service provider has failed to materially  
 26 comply with:

27 (1) customer service standards;

28 (2) carriage of public educational and governmental channels;

29 (3) reporting requirements; or

30 (4) timely and full payment of the franchise fee or the fee  
 31 assessed for the provision of public, educational, and  
 32 governmental access;

33 so long as the video service provider has been afforded a  
 34 reasonable cure period between the time the video service provider  
 35 is notified of the violation and the penalty is imposed.

36 (b) A separate violation for purposes of this section and the  
 37 ordinances passed to implement this section as it pertains to  
 38 customer service standards shall be considered to occur whenever  
 39 the franchising authority reasonably determines that a separate  
 40 customer service standard violation has occurred on one (1) day.  
 41 However, the video service provider may not be charged with  
 42 multiple violations for a single act or event affecting one (1) or  
 43 more subscribers on the same day.

44 Sec. 33. (a) An ordinance may include procedures under which  
 45 the franchising authority may:

(1) inspect and audit upon thirty (30) days prior written notice the books and records of the video service provider; and

(2) recompute any amounts determined to be payable under the ordinances adopted pursuant to this chapter.

(b) The procedures adopted under this section may not exceed the following requirements:

(1) The franchising authority may require the video service provider to make available to the franchising authority all records reasonably necessary to confirm the accurate payment of fees.

(2) The franchising authority may require the video service provider to bear the franchising authority's reasonable out-of-pocket audit expenses if the audit discloses an underpayment of more than three percent (3%) of any quarterly payment, but not less than five thousand dollars (\$5,000).

(3) The franchising authority may require the video service provider to pay any additional undisputed amounts due to the franchising authority as a result of the audit within thirty (30) days following written notice by the franchising authority to the video service provider.

(4) If the video service provider disputes any underpayment discovered as the result of an audit conducted by the franchising authority, the franchising authority shall work together with the video service provider in good faith to promptly resolve such dispute.

(5) The ordinance shall provide that the video service provider and the franchising authority maintain all rights and remedies available at law regarding any disputed amounts.

(6) The franchising authority shall have not more than three (3) years from the time the video service provider delivers a payment to provide a written, detailed objection to or dispute of the payment. If the franchising authority fails to object to or dispute the payment within that period, the franchising authority is barred from objecting to or disputing it after that period.

(7) The franchising authority shall not audit a video service provider more frequently than every twenty-four (24) months.

Sec. 34. An ordinance may require reasonable reporting requirements for annual financial information and quarterly customer service information that must be provided by a video service provider to the franchising authority so long as the information does not exceed the reporting requirements for any existing video service provider in that franchising unit.

Sec. 35. An ordinance may require video service providers to provide, without charge, within the area actually served by the

1 video service provider, one (1) video service outlet activated for  
 2 basic video service to each fire station, public school, police station,  
 3 public library, and any other local government building. The  
 4 ordinance shall apply equally to all providers of video services in  
 5 the franchising unit. However, this requirement does not apply  
 6 where it is not technically feasible for a video service provider to  
 7 comply.

8 Sec. 36. An ordinance may include requirements and procedures  
 9 for:

- 10 (1) the management of the public rights-of-way and
- 11 (2) the construction of a video service system in the public
- 12 rights-of-way.

13 Sec. 37. (a) Upon the request by an existing video service  
 14 provider, a franchising authority that has granted a negotiated  
 15 video franchise to an applicant other than the existing video service  
 16 provider shall make available to the existing video service provider  
 17 the applicable terms and conditions that the franchising authority  
 18 provides to the new video service provider, by an amendment and  
 19 restatement instead of its existing franchise.

20 (b) In addition, upon the request by an existing video service  
 21 provider, a franchising authority adopting an ordinance video  
 22 franchise under this chapter shall make available to that existing  
 23 video service provider the applicable terms and conditions from the  
 24 ordinance by allowing the existing video service provider to opt  
 25 into an ordinance video franchise.

26 (c) In the case of subsections (a) and (b), the existing video  
 27 service provider may accept all applicable terms and conditions  
 28 only in their entirety and instead of its existing franchise and  
 29 without the ability to accept specific terms and conditions.

30 (d) An existing video service provider has an enforceable right  
 31 to require that its video service franchise be amended and restated  
 32 within ninety (90) days after its request to substitute the new,  
 33 applicable terms and conditions of the new negotiated video  
 34 franchise. The new video service franchise terms and conditions  
 35 become effective upon the written notification of acceptance of the  
 36 terms and conditions by the existing video service provider.

37 Sec. 38. A video service provider may identify the following as  
 38 a separate line item on each regular bill of each subscriber:

- 39 (1) The amount of the total bill assessed as a franchise fee, or
- 40 any equivalent fee, and the franchising authority to which the
- 41 fee is paid.
- 42 (2) The amount of the total bill assessed to satisfy any
- 43 requirements imposed on the video service provider, including
- 44 those to support public, educational, or governmental access
- 45 facilities, including institutional networks.

(3) The amount of any other fee, tax, assessment, or charge of any kind imposed by any governmental entity on the transaction between the video service provider and the subscriber.

Sec. 39. To the extent that a video service provider has been authorized to use the public rights-of-way in a franchising unit and is obligated to pay a franchise fee to the franchising authority, the video service provider is not subject to any occupancy, use, or similar fee, with respect to its use of the rights-of-way by the franchising authority.

Sec. 40. A franchising authority, without the consent of the franchisee, may not:

- (1) accelerate the term of;
- (2) require the renegotiation of; or
- (3) otherwise modify in any way;

an agreement with any entity or a franchise, ordinance, permit, consent, or other authorization for the entity to use the public rights-of-way because the entity has been granted a video service franchise under this chapter to use the public rights-of-way for the development and operation of a video service system.

Sec. 41. A video service franchise granted under this chapter may not be transferred without the prior consent of the franchising authority. However, a franchising authority may not unreasonably withhold, delay, or condition consent.

Sec. 42. Notwithstanding the provisions of this article, a new video franchisee who considers, within three (3) years after the grant of a video franchise under this article, that its provision of video services within the franchising unit is no longer economically feasible, may notify the franchising unit and surrender its video franchise for the entire franchising unit without liability to such franchising unit. If a new video franchisee surrenders its video service franchise, it is not eligible to obtain a new video service franchise within the franchising unit until after the normal expiration date of the franchise that the franchisee surrendered. This surrender of a video franchise does not effect other franchises held by the new video franchisee or noncable services offered by the new video franchisee.

Sec. 43. A video service provider may initiate a proceeding to renew its video service franchise:

- (1) in conformity with the renewal procedures in 47 U.S.C. 546; or
- (2) by requesting an ordinance video franchise under section 24 of this chapter.

If the franchise of an existing video service provider has expired before March 16, 2006, a renewal request for an ordinance video franchise may be filed before July 16, 2006."

- 1 Delete pages 68 through 85.  
2 Page 86, delete lines 1 through 17.  
3 Page 91, between lines 28 and 29, begin a new paragraph and insert:  
4 "SECTION 65. [EFFECTIVE UPON PASSAGE] **(a) The**  
5 **definitions in IC 8-1-34 apply throughout this SECTION.**  
6 **(b) IC 8-1-34, as added by this act, does not terminate a video**  
7 **service franchise that is in effect on March 15, 2006. However, an**  
8 **existing video service provider may opt into the new terms of a**  
9 **negotiated video franchise or ordinance video franchise, as**  
10 **provided under IC 8-1-34-37, as added by this act."**  
11 Renumber all SECTIONS consecutively.  
(Reference is to ESB 245 as printed February 22, 2006.)

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Representative Pierce